IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2855 OF 2004

Dhirajlal N. Shah .. Petitioner.
V/s.
State of Maharashtra & Others .. Respondents.

Dr.Virendra Tulzapurkar, Senior counsel with Mr.H.N. Thakore and Ms.Jyoti Ghag i/b. Thakore Jariwala & Associates for the petitioners.
Mr.S.K. Nair for the respondents.

CORAM : R.M. LODHA, &
J.P. DEVADHAR, JJ.

DATED : 26TH OCTOBER, 2004.

P.C. :

Heard Dr.Virendra Tulzapurkar, the learned senior counsel for the petitioner.

2. We are not inclined to go into the merits of the contention raised by the petitioner that Explanation in Section 2(10) of the Maharashtra Sales Tax on Transfer of Right to Use any Goods for any Purpose Act, 1985 (for short 'Act of 1985') is ultra vires the Constitution of India. We also do not intend to go into the merits of the contention that Trade Circular dated October 16, 2004 has unjustifiably been not made applicable to the Video Cassettes and CDs presently in this writ petition. It is so because against the order passed by the Sales Tax Officer E-210 (Enforcement Branch), Mumbai

for the period 2000-2001, 2001-2002 and 2002-2003 raising demand of tax, interest and penalty under the said Act, the petitioner has preferred appeals before the Assistant Commissioner of Sales Tax (Appeals) and the said appeals are pending. The operation of the order passed by the Sales Tax Officer for the aforesaid years has been stayed by the Appellate Authority subject to part payment of the demand as directed. Aggrieved by the order of the Appellate Authority the petitioner has preferred second appeals before the Maharashtra Sales Tax Tribunal. We find from the order dated August 31, 2004 passed by the Maharashtra Sales Tax Tribunal that the appellant was ready to make the balance payment as per the earlier order passed by the Tribunal on July 23, 2004 and, accordingly, the Tribunal granted time until October 15, 2004 for making balance part payment as per the order dated July 23, 2004. The petitioner having represented before the Tribunal that they are ready to make the balance payment as directed in the order dated July 23, 2004, we are not persuaded by the submission of the learned senior counsel for the petitioner that prima facie on the basis of the Trade Circular dated October 16, 2004 the demand is discriminatory or that the Explanation in Section 2(10) is unconstitutional. In our considered view the appeals filed by the petitioner have to be taken

to logical conclusion and, if necessary, at appropriate stage challenge to the constitutional validity of Explanation in Section 2(10) of the Maharashtra Sales Tax on Transfer of Right to use any Goods for any Purpose Act and the plea of discrimination pertaining to the Trade Circular dated October 16, 2004 can be raised before this Court subsequently.

3. We are, therefore, not inclined to entertain the writ petition. The writ petition is dismissed in limine.

4. At this stage, the learned senior counsel for the petitioner prays that the time granted by the Maharashtra Sales Tax Tribunal for depositing the balance of part payment be further extended. The learned Assistant Government Pleader does not have any serious objection to this request.

6. We, accordingly, permit the petitioner to deposit the balance of part payment as directed by the Maharashtra Sales Tax Tribunal in its order dated July 23, 2004 by December 31, 2004.

(R.M. LODHA, J.)

(J.P. DEVADHAR, J.)